

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

CRYOVAC, INC.,	)	
	)	
Plaintiff/Counter-Defendant.	)	Civil Action No. 04-1278
	)	
vs.	)	Hon. Kent A. Jordan
	)	
PECHINEY PLASTIC PACKAGING, INC.,	)	
	)	
Defendant/Counter-Plaintiff.	)	
	)	

**PECHINEY'S MOTION TO STRIKE THE AFFIDAVIT OF KARL DEILY IN  
SUPPORT OF CRYOVAC'S MEMORANDUM IN OPPOSITION TO PECHINEY'S  
MOTION FOR PARTIAL SUMMARY JUDGMENT OF LOST PROFITS**

1. Pursuant to Fed. R. Civ. P. 56(e), Defendant/Counter-Plaintiff Pechiney Plastic Packaging Inc. ("Pechiney") respectfully moves this Court to strike in its entirety the Affidavit of Karl Deily in Support of Cryovac's Memorandum in Opposition to Pechiney's Motion for Partial Summary Judgment of Lost Profits filed on November 18, 2005 ("Deily Affidavit"), or, in the alternative, that Paragraph 9 of the Deily Affidavit be stricken.

2. The Deily Affidavit is not made on personal knowledge, lacks foundation, is speculative and conclusory in violation of Federal Civil Rule of Procedure 56(e), and so should be stricken.

3. Pechiney submits contemporaneously herewith Pechiney's Memorandum in Support of its Motion to Strike the Affidavit of Karl Deily.

WHEREFORE, Pechiney respectfully requests that the Affidavit of Karl Deily in Support of Cryovac's Memorandum in Opposition to Pechiney's Motion for Partial Summary Judgment

of Lost Profits be stricken in its entirety, or in the alternative that paragraph 9 of the Deily Affidavit be stricken.

Respectfully submitted,

PECHINEY PLASTIC PACKAGING, INC.

Dated: December 5, 2005

By: /s/ N. Richard Powers  
N. Richard Powers

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 5<sup>th</sup> day of December, 2005 I electronically filed a copy of the foregoing with the Clerk of the Court using CM/ECF and served the following individuals in the manner indicated:

**BY HAND DELIVERY**

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